Southern Interiors, Inc., Service Art, Inc., and Tri-County Installations, Inc. *and* Local 67, Operative Plasterers' and Cement Masons International Association of the United States and Canada, AFL–CIO, CLC. Case 7–CA–37262

October 20, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE,

Upon a charge and amended charge filed by the Union on May 25 and June 22, 1995, the General Counsel of the National Labor Relations Board issued a complaint on July 12, 1995, against Southern Interiors, Inc. (Respondent Southern Interiors), Service Art, Inc. (Respondent Service Art), and Tri-County Installations, Inc. (Respondent Tri-County), collectively the Respondent, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge and complaint, the Respondent failed to file an answer.

On September 21, 1995, the General Counsel filed a Motion for Default Summary Judgment with the Board. On September 22, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 8, 1995, notified the Respondent that unless an answer were received by August 22, 1995, a Motion for Summary Judgment would be filed.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

[1] The Respondent, by letter dated August 11, 1995, indicated that it had forwarded a copy of the August 8, 1995 letter to the Respondent's representative. However, no answer has been filed.

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Southern Interiors, Respondent Service Art, and Respondent Tri-County, separate corporations with a single office and place of business at 14711 Harper, Detroit, Michigan, have been engaged in the construction business performing drywall, plastering, and related work for both businesses and residences. At all material times, the Respondent, comprising Respondent Southern Interiors, Respondent Service Art, and Respondent Tri-County, has been a single affiliated business enterprise with common officers, ownership, management, and supervision. Each Respondent has shared common premises and facilities; has provided services for and sales to the others; and has interchanged personnel with the others; and the Respondent has held itself out to the public as a single-integrated business enterprise. Based on its operations described above, Respondent Southern Interiors, Respondent Service Art, and Respondent Tri-County constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

During the past 12 months preceding the filing of the charge, the Respondent, in conducting its business operations, derived gross revenues in excess of $500,000 and during the same period of time purchased and received at its Detroit, Michigan facility goods valued in excess of $50,000 directly from points outside the State of Michigan. During the same period, the Respondent received in excess of $50,000 for providing services to other companies, each of which during the same period received goods at its Michigan locations, valued in excess of $50,000, directly from points outside Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All journeymen and apprentice plasterers employed by the Respondent at or out of its Detroit facility in commercial, residential or shop work, but excluding office clerical employees, guards and supervisors as defined in the Act.

At all material times, and as embodied in a collective-bargaining agreement between the Union and Respondent Southern Interiors, effective for the period from June 1, 1994, to May 31, 1997, the Union has

been the limited exclusive collective-bargaining representative of the unit and has been voluntarily recognized as such by Respondent Southern Interiors.[2] At all material times, based on Section 9(a) of the Act, Respondent Southern Interiors has recognized the Union as the limited exclusive collective-bargaining representative of the unit.

The Respondent has refused to recognize and bargain with the Union as the limited exclusive collective-bargaining representative of the unit at certain of the Respondent's jobsites, most particularly those going under the name of Respondent Tri-County.

During all times relevant to this charge, the Respondent has made unilateral changes in mandatory subjects of bargaining by refusing to follow the collective-bargaining agreement described above on Respondent Southern Interiors sites by failing to make all monthly fringe benefit reports and contributions as required by article 5, section 5.

The Respondent has failed and refused to permit an audit by the Union of the books of Respondents Tri-County and Service Art as requested on May 17, 1995, and as required by article 5, section 5(J), of the agreement and it has thereby refused to provide requested information regarding the relationship between the three Respondents as requested by the Union which is necessary to administer the collective-bargaining agreement, and which involves a mandatory subject of bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required monthly fringe benefit reports and contributions as required by article 5, section 5(J), we shall order the Respondent to make the reports and contributions and to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[3]

Furthermore, having found that the Respondent has failed to permit an audit as required by article 5, section 5(J), of the agreement, we shall order the Respondent to permit such an audit.

Finally, having found that the Respondent has refused to recognize and bargain with the Union as the limited exclusive collective-bargaining representative of the unit at certain of the Respondent's jobsites, most particularly those going under the name of Respondent Tri-County, we shall order it to cease and desist and to bargain, on request, with the Union. In accordance with the General Counsel's request, we shall also order the Respondent to apply the contract retroactively to all of the Respondent's jobsites and to make the unit employees whole for any loss of earnings they may have suffered as a result of the Respondent's failure to do so. Backpay shall be computed in the manner set forth in *Ogle Protection Service*, supra, with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, supra. In addition, we shall order the Respondent to make the unit employees whole for any loss of benefits by making any and all delinquent benefit fund contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., supra, and by reimbursing the unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, supra, such amounts to be computed in the manner set forth in *Ogle Protec-*

[2] The Respondent is alleged to be in the construction business, suggesting that it is a construction industry employer subject to the provisions of Sec. 8(f) of the Act. Accordingly, in the absence of an allegation that the bargaining relationship was actually based on 9(a) majority support, we find that the relationship was entered into pursuant to Sec. 8(f), and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See *Electri-Tech, Inc*., 306 NLRB 707 fn. 2 (1992) (citing *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F. 2d 770 (3d Cir. 1988).

Member Browning finds it unnecessary to decide in this proceeding whether the parties' relationship is governed by Sec. 9 or by Sec. 8(f). She notes that in either event the Respondent was obligated to adhere to the terms and conditions of the collective-bargaining agreement.

[3] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

tion Service, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Southern Interiors, Inc., Service Art, Inc., and Tri-County Installations, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Local 67, Operative Plasterers' and Cement Masons International Association of the United States and Canada, AFL–CIO, CLC, as the limited exclusive collective-bargaining representative of the unit at certain of the Respondent's jobsites, most particularly those going under the name of Respondent Tri-County. The unit is:

> All journeymen and apprentice plasterers employed by the Respondent at or out of its Detroit facility in commercial, residential or shop work, but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Failing to make monthly fringe benefit reports and contributions on behalf of its unit employees as required by article 5, section 5, of the collective-bargaining agreement with the Union which is effective for the period from June 1, 1994, to May 31, 1997.

(c) Failing to permit an audit by the Union of the books of Tri-County Installations, Inc. and Service Art, Inc., as required by article 5, section 5(J), of the collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the limited exclusive collective-bargaining representative of the unit, including unit employees at the Tri-County jobsites.

(b) Apply the current contract retroactively for all the Respondent's jobsites, and make whole its employees and the benefit funds, in the manner set forth in the remedy section of this Decision.

(c) Comply with the collective-bargaining agreement by making all monthly fringe benefit reports and contributions as required by article 5, section 5(J), of the collective-bargaining agreement and make whole its unit employees by reimbursing them for any expenses ensuing from its failure to make the required contributions, as set forth in the remedy section of this Decision.

(d) Permit an audit by the Union of the books of Respondents Tri-County and Service Art as required by article 5, section 5(J), of the collective-bargaining agreement.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at at its facility in Detroit, Michigan, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain with Local 67, Operative Plasterers' and Cement Masons International Association of the United States and Canada, AFL–CIO, CLC, as the limited exclusive collective-bargaining representative of the unit at certain of our jobsites, most particularly those going under the name of Tri-County. The unit is:

> All journeymen and apprentice plasterers employed by us at or out of our Detroit facility in commercial, residential or shop work, but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT fail to make monthly fringe benefit reports and contributions on behalf of our unit employees as required by article 5, section 5, of the collective-bargaining agreement with the Union which is effective for the period from June 1, 1994, to May 31, 1997.

WE WILL NOT fail to permit an audit by the Union of the books of Tri-County Installations, Inc. and Serv-

ice Art, Inc., as required by article 5, section 5(J), of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the limited exclusive collective-bargaining representative of the unit, including unit employees at the Tri-County jobsites.

WE WILL apply the current contract retroactively to all of our jobsites, and WE WILL make whole our employees and the benefit funds.

WE WILL comply with the collective-bargaining agreement by making all monthly fringe benefits reports and contributions as required by article 5, section 5(J), of the collective-bargaining agreement and WE WILL make whole our unit employees by reimbursing them for any expenses ensuing from our failure to make the required contributions.

WE WILL permit an audit by the Union of the books of Tri-County Installations, Inc. and Service Art, Inc. as required by article 5, section 5(J), of the collective-bargaining agreement.

SOUTHERN INTERIORS, INC., SERVICE ART, INC., AND TRI-COUNTY INSTALLATIONS, INC.